152 US 581

RECORD, CASE NO. 14304.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 274.

ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS FOR THE PORT AND DISTRICT OF CHICAGO, PLAINTIFF IN ERROR,

vs.

LEOPOLD SCHLESINGER AND DAVID MAYER, COPARTNERS, AS SCHLESINGER & MAYER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

FILED OCTOBER 17, 1890.

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a UNITED STATES CIRCUIT COURT,
Northern District of Illinois.

LEOPOLD SCHLESINGER AND DAVID MAYER, copartners under the name of Schlesinger & Mayer, *v.* ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS for the port and district of Chicago.	Assumpsit.

Wm. G. Ewing, United States attorney, attorney for plaintiff in error.
Shuman and Defrees, attorneys for defendants in error.

1 Pleas in the circuit court of the United States of America for the northern district of Illinois, held at the United States court rooms in the city of Chicago, in the district aforesaid, before the Hon. Henry W. Blodgett, judge of the district court of the United States for the northern district of Illinois, on Thursday, the eighteenth day of July, in the July term of said court, in the year of our Lord one thousand eight hundred and eighty-nine, and of our Independence the one hundred and fourteenth year.

WM. H. BRADLEY, *Clerk.*

LEOPOLD SCHLESINGER AND DAVID MAYER, copartners under the name of Schlesinger & Mayer, *v.* ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS for the port and district of Chicago.	Assumpsit.

NORTHERN DISTRICT OF ILLINOIS, *ss.:*

Be it remembered that on the fourth day of April, 1889, came the plaintiffs, by their attorneys, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago, in said district, their præcipe for a summons, and also, at the same time, filed their bond for costs in said entitled cause, which said præcipe and bond are in the words and figures following, to wit:

2 *Præcipe.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

United States circuit court for the northern district of Illinois, May term, A. D. 1889.

LEOPOLD SCHLESINGER AND DAVID MAYER, copartners under the name of Schlesinger & Mayer, *v.* ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS for the port and district of Chicago.	Assumpsit damages, $300.

The clerk of said court will issue a summons in the above-entitled cause to said defendant in a plea of trespass on the case on promises to the

damage of said plaintiffs in the sum of three hundred dollars, and direct the same to the marshal of said district to execute and make it returnable to the May term of said court, A. D. 1889.

SHUMAN & DEFREES,
Plaintiff's Attorneys.

To WM. H. BRADLEY, Esq., *Clerk*,
CHICAGO, *April 4th*, 1889.

(Endorsed:) Filed Apl. 4, 1889. Wm. H. Bradley, clerk.

3 *Bond for costs.*

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

Circuit court, May term, A. D. 1889.

LEOPOLD SCHLESINGER ET AL.
v.
ANTHONY F. SEEBERGER, COLLECTOR, &c. } In law.

We enter ourselves security for costs in this cause, and promise to pay all costs which may accrue to the opposite party in this action, or to any of the officers of this court; and in default of payment by the plaintiffs of any costs ordered or adjudged to be paid by them, we hereby agree and stipulate that execution may issue against our property for any costs taxed against plaintiffs. Dated this 4th day of April, A. D. 1889.

SHUMAN & DEFREES.

(Endorsed:) Filed Ap'l 4, A. D. 1889. Wm. H. Bradley, clerk.

4 On the same day, to wit: On the fourth day of April, 1889, there issued out of said clerk's office a writ of summons in said entitled cause, which said writ, together with the return of the marshal endorsed thereon, is in the words and figures following, to wit:

Summons.

CIRCUIT COURT OF THE UNITED STATES OF AMERICA.
Northern District of Illinois, ss:

The United States of America to the marshal of the northern district of Illinois, greeting:

We command you to summon Anthony F. Seeberger, collector of customs for the port and district of Chicago, if found in your district, to be and appear before our judges of our circuit court of the United States for the northern district of Illinois, on the first day of the next term thereof, to be holden at Chicago, in the district aforesaid, on the first Monday of May next, to answer unto Leopold Schlesinger and David Mayer, copartners, &c., of a plea of trespass on the case upon promises to their damage, as is alleged, of three hundred dollars, and have you then and there this writ.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States of America, at Chicago aforesaid, this 4th day of April in the year of our Lord one thousand eight hundred
5 and eighty-nine, and of our Independence the 113th year.

[SEAL.] WM. H. BRADLEY, *Clerk.*

Marshal's return.

I have served the within writ by reading the same to and within the presence and hearing of Anthony F. Seeberger, collector of customs for the port and district of Chicago therein named, on the 4th day of April, 1889.

F. H. MARSH,
U. S. Marshal,
By GEO. N. JONES,.
Deputy.

(Endorsed:) Filed Apl. 5, A. D., 1889. Wm. H Bradley, clerk.

Afterward, to wit: On the sixteenth day of April, 1889, came the plaintiffs, by their attorneys, and filed in said clerk's office their declaration in said entitled cause, which said declaration is in the words and figures following, to wit:

Declaration.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the United States circuit court for the northern district of Illinois.

To the May term, 1889:

Leopold Schlesinger and David Mayer, copartners doing busi-
6 ness under the firm name and style of Schlesinger & Mayer, plaintiffs in this suit (which is a suit arising under the revenue laws of the United States and is brought to recover duties claimed by the plaintiffs to have been illegally exacted of them and by them paid under protest), by Shuman & Defrees, their attorneys, complain of Anthony F. Seeberger, collector of customs for the port and district of Chicago, defendant herein, who was summoned, etc., of a plea of trespass on the case on promises.

For that, whereas the said plaintiff heretofore, to wit, on the first day of April, in the year of our Lord one thousand eight hundred and eighty-nine, at, to wit, the northern district of Illinois, made payment to the said defendant, collector as aforesaid, of a certain large sum of money, to wit, the sum of three hundred dollars and —— cents, lawful money of the United States, as duties under protest, and in order to obtain possession of certain Chinese goat skins and opera glasses set with pearl, merchandise imported into the United States for them, the said plaintiffs entered for consumption at the custom-house at the port of Chicago, in the district

aforesaid, under the charge and control of the said defendant as such collector; and the said plaintiffs aver that said sum of money above specified so paid to the said defendant as aforesaid, as duties as aforesaid, was
7 in excess of the amount of duties authorized by the laws of the United States to be levied, collected, and paid upon the merchandise aforesaid, and was by the said defendant collector illegally demanded and exacted of and from the said plaintiffs.

And the said plaintiffs aver that within ten days after the ascertainment and liquidation of the duties upon the merchandise aforesaid by the proper officers of the customs they, the said plaintiffs, being dissatisfied with the decision of the said collector, gave notice in writing to the said defendant as collector, setting forth therein distinctly and specifically the ground of their the said plaintiff's objections thereto, and that within thirty days after the date of the said ascertainment and liquidation as aforesaid the plaintiffs appealed to the Secretary of the Treasury of the United States. And the said plaintiffs aver that the decision of the said Secretary of the Treasury has been had on said appeals, and that this suit has been brought within ninety days after the decision of the said Secretary of the Treasury on such appeals.

By means whereof and by force of the statute of the United States in such case made and provided, the said defendant became liable to pay to the said plaintiffs the sum of three hundred dollars and —— cents, lawful money as aforesaid, so illegally demanded of and under protest paid by the said plaintiffs as aforesaid, and, being so liable, the said
8 defendant afterwards, to wit, on the day and year and at the district aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay to the said plaintiffs the said sum of money when he, the said defendant, should be thereunto afterwards requested.

And whereas, also, the said defendant afterwards, to wit, on the same day and year and at the place last aforesaid, became and was indebted to the said plaintiffs in the further sum of three hundred dollars, like lawful money as aforesaid, for money by the said defendant before that time had and received to and for the use of the said plaintiffs; and, being so indebted, the said defendant afterwards, to wit, on the day and year and at the district last aforesaid, in consideration thereof, undertook and then and there faithfully promised the said plaintiffs well and truly to pay unto the said plaintiffs the said sum of money last mentioned whenever the said defendant should be thereunto afterwards requested.

Nevertheless the said defendant (although often requested, etc.) has not paid the said several sums of money above specified, or any or either of them, or any part thereof to the said plaintiffs; but to pay the same or any part thereof to the said plaintiffs the said defendant hath hitherto
9 wholly neglected and refused, and still does so neglect and refuse, to the damage of the said plaintiffs in the sum of three hundred dollars, and therefore the said plaintiffs bring their suit, &c.

SHUMAN & DEFREES,
Plaintiff's Attorneys.

(Endorsed:) Filed Ap'l 16, 1889. Wm. H. Bradley, clerk.

Afterward, to wit, on the nineteenth day of April, 1889, came the defendant, by his attorney, and filed in said clerk's office his appearance in said entitled cause, which said appearance is in the words and figures following, to wit:

Appearance.

UNITED STATES CIRCUIT COURT,
Northern District of Illinois:

LEOPOLD SCHLESINGER ET AL.
vs.
A. F. SEEBERGER, COLLECTOR, &C. } No. 21239. Assumpsit.

The appearance of Anthony F. Seeberger, collector, defendant in this cause, is hereby entered by his attorney.

WM. G. EWING,
United States Attorney.

(Endorsed:) Filed Apr. 19, 1889. Wm. H. Bradley, clerk.

10 Afterwards, to wit, on the first day of June, 1889, came the defendant, by his attorney, and filed in said clerk's office his plea in said entitled cause, which said plea is in the words and figures following, to wit:

Plea.

In the circuit court of the United States of America for the northern district of Illinois, northern division, May term, 1889.

ANTHONY F. SEEBERGER, COLLECTOR, &C.,
ats.
LEOPOLD SCHLESINGER ET AL. } No. 21239. Assumpsit.

And the said Anthony F. Seeberger, collector, &c., defendant, by William G. Ewing, United States attorney for this district, his attorney, comes and defends, etc., when, etc., and says that he did not undertake or promise in manner and form as the said plaintiffs have above thereof complained against him; and of this the said defendant puts himself upon the country, etc.

WILLIAM G. EWING,
U. S. Attorney for Defendant.

(Endorsed:) Filed June 1, 1889. Wm. H. Bradley, clerk.

11 Afterward, to wit, on the twelfth day of June, 1889, there was filed in said clerk's office a stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois.

LEOPOLD SCHLESINGER ET AL.
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &C. } Gen. No. 21239.

It is hereby stipulated that the above-entitled cause may be submitted to the court for trial without a jury, a jury being hereby expressly waived.

SHUMAN & DEFREES,
Attorneys for Plaintiffs.
W. G. EWING,
U. S. Attorney for Defendant.

(Endorsed:) Filed this 12th day of June, A. D. 1889. Wm. H. Bradley, clerk.

12 Afterward, to wit: On the fourteenth day of June, in the adjourned May term of said court, 1889, in the record of the proceedings thereof in said entitled cause before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Order.

LEOPOLD SCHLESINGER ET AL.
vs.
ANTHONY F. SEEBERGER, &C. } Assumpsit.

Now come the parties, by their attorneys, and upon issue joined herein by agreement of the parties as per stipulation filed, they waive the intervention of a jury, and for trial put themselves upon the court, and after hearing the evidence and the arguments of the counsel the court finds the issue for the plaintiffs as to the opera glasses, and assesses their damages thereon at six dollars and sixty cents, and as to the other articles named herein the court takes the same under advisement.

13 Afterward, to wit: On the eighteenth day of July, 1889, there was filed in said clerk's office the opinion of Judge Blodgett, in said entitled cause, which said opinion is in the words and figures following, to wit:

Opinion.

UNITED STATES OF AMERICA,
Northern District of Illinois.

In the circuit court of the United States for the northern district of Illinois.

LEOPOLD SCHLESINGER ET AL.
vs.
ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS. } 21239, July 18, 1889.

BLODGETT, J.

Plaintiffs imported a quantity of skins dressed, with the hair on which were invoiced as "Chinese goat-skins." They were tanned so as to make the skins soft and pliable, and consisted of small pieces of skin sewn together so as to make parallelograms of about 18 inches wide, and from 36 to 48 inches long. The collector assessed them for duty as "rugs," under clause 378, of Heyl's arrangement of the customs laws, at 40 per cent ad valorem. The plaintiffs paid the duty so assessed under protest, claiming they should have been assessed as "skins dressed and finished, &c.," under clause 461, of Heyl, at a duty of 20 per cent ad valorem.

14 The proof shows that these goods are sold to some extent for the purpose of being used as floor rugs; that they are also sold for door mats and vestibule mats, and are sometimes used for sleigh and carriage robes, and for trimming for overcoats, and such like uses. I do not think from the proof that the skins in question were necessarily intended to be used in the shapes in which they were sewn together when imported, but that it was expected that they might be ripped apart at the seams and applied to the different uses for which they were in demand, either in the natural colors of the skins themselves, or after having been dyed and lined.

It, therefore, seems to me that these articles are not so exclusively used as rugs and applied to that use as to make them dutiable as "rugs;" they fall naturally within the law, and it seems to me within the spirit of the provisions of clause 461 as "skins dressed and finished," and in that condition are adaptable for various uses besides that of rugs.

The clause under which the collector assessed them for duty is found in schedule K, which in terms is intended to include "wool and woolen goods." Certainly these are neither wool nor manufactures of wool, but come much more naturally within the group of goods called "sundries," provided for in schedule N of the act of 1883. The mere fact that they are used, or may be used, by some people for rugs does not neces-

15 sarily bring them within the operation of the provision of the law which provides for a duty on "rugs" in the group of wool and

woolen manufactures. The goods in question, it is true, may be, and to some extent are, used on floors in the manner that rugs are used, but this does not make them dutiable as "rugs" if they are elsewhere specifically described and provided for, and it seems to me they are so described and provided for under the terms "skins dressed and finished" in clause 461, and when so described, the use to which they may be applied does not determine their classification or rate of duty. Suppose they had been tanned into leather, I take it there would be no protest but what they would be dutiable as leather in some of its forms, and not as rugs, although some person might intend to buy and use them in place of rugs. I am, therefore, of the opinion that the goods should have been assessed under clause 461 at a duty of 20 per cent ad valorem, and the issue is found for the plaintiff.

SHUMAN & DEFREES,
For Plaintiffs.
W. G. EWING,
U. S. Dist. Att'y, and
G. H. HARRIS,
Asst. U. S. Att'y, for Defendant.

(Endorsed:) Filed July 18, 1889. Wm. H. Bradley, clerk.

16 On the same day, to wit: On the eighteenth day of July, in the July term of said court, 1889, in the record of the proceedings thereof in said entitled cause, before Hon. Henry W. Blodgett, district judge, is the following entry, to wit:

Judgment.

LEOPOLD SCHLESINGER AND DAVID MAYER,
vs.
ANTHONY F. SEEBERGER, COLLECTOR, &C. } Assumpsit.

The court, having considered and being now fully advised upon the matters heretofore taken under advisement herein, finds the issue for the plaintiffs as to the Chinese goat skins and assess their damages at one hundred and twenty dollars and twenty cents with interest thereon from time of payment, and the court having heretofore found the issue for the plaintiffs as to the opera glasses and assessed their damages at six dollars and sixty cents: It is thereupon considered and adjudged by the court that said plaintiffs do have and recover of said defendant the said sum of six dollars and sixty cents, and also the said sum of one hundred and twenty dollars and twenty cents, their damages, with interest thereon from time of payment, together with their costs in this behalf, amounting to twenty-three dollars and sixteen cents.

And the court finds that there was probable cause for the acts done herein by said defendant, and that execution do not issue herein.

17 On the hearing of said cause, the following exceptions were taken and were allowed by the court, and made of record, which said exceptions are in the words and figures following, to wit:

Bill of exceptions.

In the circuit court of the United States in and for the northern district of Illinois, northern division.

LEOPOLD SCHLESINGER ET. AL *vs.* ANTHONY SEEBERGER, COLLECTOR, ETC.	Gen. No. 21239. Assumpsit.

Be it remembered that this cause was submitted to the court without a jury; that thereupon the court, having heard the evidence on behalf of the plaintiff and of the defendant, made the following special finding of facts.;

Special finding.

UNITED STATES OF AMERICA,
Northern District of Illinois, ss:

In the circuit court of the United States for the northern district of Illinois.

LEOPOLD SCHLESINGER ET AL. *vs.* ANTHONY F. SEEBERGER, COLLECTOR OF CUSTOMS.	Gen. No. 21239. Assumpsit.

Come now the parties, and this cause having been submitted to the court for trial, without a jury, a jury having been expressly waived
18 by stipulation in writing filed herein; and the court, having heard the evidence and arguments of counsel, finds the facts specially as follows:

That prior to the commencement of this suit the plaintiffs imported and entered at the custom-house in the port and district of Chicago certain Chinese goat skins, dressed and finished, upon which the plaintiffs paid a duty of forty per centum ad valorem, as rugs not otherwise provided for, classified and assessed by the defendant collector, under Schedule "K," section 2502, act of March 3, 1883, namely, "Carpets * * * * * and rugs not otherwise provided for, forty per centum ad valorem." (T. I., New, 378.)

That for the purpose of obtaining possession of said merchandise the plaintiffs, under protest, paid the defendant as such collector the duties demanded of them.

That within ten days after the ascertainment and liquidation of the duties upon the merchandise in question, by the proper officers of the customs, the plaintiffs gave notice in writing to the collector, setting forth therein distinctly and specifically the grounds of their objection to the payment of the duties assessed upon said merchandise, and within thirty days after such ascertainment and liquidation of the duties as aforesaid the plaintiffs appealed therefrom to the Secretary of the Treasury.

That in such protest and appeal the plaintiffs claimed said mer-
19 chandise should be assessed a duty of twenty per centum ad valorem, under Schedule "N, sundries," section 2502, act of March 3, 1883 (T. I., New, 461), as "skins dressed and finished, of all kinds, not otherwise provided for."

That the decision of the Secretary of the Treasury was had on said appeal adversely to the claim of the plaintiffs, and this suit was brought within ninety days after such decision of the Secretary of the Treasury on such appeal to recover the alleged excess of duties, amounting to $113.60.

And from the proof in the case the court further finds that the goods in question were described in the invoice as "Chinese goat skins;" that they are tanned with the hair on so that the skin is soft and pliant; that none of the skins are whole or entire, but the articles imported are made of pieces of skins tanned as aforesaid, loosely sewn together so as to make large parallelogram-shaped pieces about 18 inches wide by 36 to 48 inches long; that they are advertised and sold to some extent for floor rugs, and are sometimes lined and trimmed for sleigh and carriage robes; that they are not always used in the shapes imported, but are sometimes cut apart at the seams, or cut into strips and dyed and used for trimming lap robes, overcoats, &c.

The court further finds that the skins in question are not rugs "within the meaning of clause 378 of Heyl's arrangement of the act of
20 March 3, 1883, as assumed by the collector, but that they should have been assessed by the collector at a duty of 20 per cent ad valorem, as "skins dressed and finished, &c.," under the provision of clause 461 of Heyl's arrangement of said act. I therefore find the issue for the plaintiffs as to said skins and assess their damages at $113.60 and interest thereon from date of payment.

The court further specially finds that prior to the commencement of this suit the plaintiffs imported and entered at the custom-house in the port and district of Chicago, in the northern district of Illinois, certain shell-covered opera glasses, composed of shell, metal, and glass, upon which said merchandise the plaintiffs paid a duty of forty-five percentum ad valorem, assessed by the defendant collector of customs as manufactured articles, composed in part of metal, under schedule "C," section 2502, act of March 3, 1883, namely: "Manufactures, articles, or wares not specially enumerated or provided for in this act, composed wholly or in part of iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum, or any other metal, and whether partly or wholly manufactured, forty-five per centum ad valorem." (T. I., New, 216.)

That for the purpose of obtaining possession of said merchandise, the plaintiff, under protest, paid to the defendant, as such collector, the duties demanded of him.

21 That within ten days after the ascertainment and liquidation of the duties upon the merchandise in question by the proper officers of the customs, the plaintiff gave notice in writing to the collector defendant, setting forth therein, distinctly and specifically, the grounds of their objection to the payment of the duties assessed upon said merchandise; and within thirty days after such ascertainment and liquidation of the duties as aforesaid the plaintiffs duly appealed therefrom to the Secretary of the Treasury.

That in such protest and appeal the plaintiffs claimed said merchandise should be assessed a duty of twenty-five per centum ad valorem under schedule "N, sundries," section 2502, act of March 3, 1883, namely: "Shells, whole or part of, manufactured, of every description, not specially enumerated or provided for in this act, twenty-five per centum ad

valorem;" and under section 2499, as articles composed of shell, metal, and glass, in which the shell is the component of chief value. (T. I., New, 468 & 833.)

That the decision of the Secretary of the Treasury was had on said appeal adversely to the claim of the plaintiff, and this suit was brought within ninety days after such decision of the Secretary of the Treasury on such appeal to recover the alleged excess of duties, amounting to $

And from the proof in said cause the court further finds that said
22 opera glasses are composed of silver or nickel plated metal tubes, fitted to slide within each other, and held together by a metal frame work or connections, said tubes containing glass lenses properly fitted therein, and that said tubes are inclosed in a cover of polished mother-of-pearl; that the shell, when manufactured or brought to the proper shape for such covering and properly polished, costs more than the glass lenses and metal tubes and frame when finished ready to be combined with said pearl to make a complete opera glass.

I therefore find from the proof that the shell is the component material of chief value in the opera glasses in question, and that said goods should have been assessed for duty at the rate of 25 per cent ad valorem as "shells, whole or parts of, manufactured, &c.," under the provisions of Schedule N, clause 486 Heyl, of the act of March 3, 1883, and the third clause of section 2499 of the same act.

The issue is, therefore, found for the plaintiff as to said opera glasses, and the damages assessed at $6.60, with interest thereon from date of payment.

The court, therefore, finds the issue as to said Chinese goatskins for the plaintiffs, and assesses the plaintiff's damages at $120.20, with interest from the dates of the various payment.

H. W. BLODGETT.

(Endorsed:) Filed July 18, 1889. Wm. H. Bradley, clerk.

23 And that thereupon, after the court had so found the facts as aforesaid, the court held the law to be as set out in the opinion of the court in writing filed herein.

And thereupon and before the court had so delivered its said opinion, defendant, by his counsel, requested the court, among other things, to hold that the plaintiff could not recover in this suit, because it appeared from the facts that the goods in question were dressed furs on the skin, under clause 450 of Heyl's arrangement of the tariff laws; and, further, that such claim was not covered by the plaintiff in his protest; but the court refused so to hold, to which action of the court, in holding the law to be as set out in said opinion, and in refusing to hold as requested herein, the defendant, by his counsel, then and there duly excepted, and tendered this, his bill of exceptions, which he prays may be signed, sealed, enrolled, and made a part of the record, and the same is done accordingly.

[SEAL.] H. W. BLODGETT,
Judge.

(Endorsed:) Filed July 18, 1889. Wm. H. Bradley, clerk.

24 NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States for said northern district of Illinois, do hereby certify the above and foregoing to be a true and correct transcript of the record of all the proceedings had in said court in the cause wherein Leopold Schlesinger and David Mayer, copartners under the name of Schlesinger & Mayer, are plaintiffs and Anthony F. Seeberger, collector of customs for the port and district of Chicago, is defendant, as the same appears from the records and files of said court, now remaining in my custody and control.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at my office in Chicago in said district, northern division, this sixth day of March, 1890.

[SEAL.] WM. H. BRADLEY,
Clerk.

25 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

The United States of America,

To the judges of the circuit court of the United States, for the northern district of Illinois, greeting:

Because in the record and proceedings, as also in the rendition of a judgment in a plea which is before you in said circuit court between Leopold Schlesinger and David Mayer, copartners under the name of Schlesinger and Mayer, and Anthony F. Seeberger, collector of customs for the port and district of Chicago, in an action of assumpsit, a manifest error hath happened, to the great damage of the said Anthony F. Seeberger, collector of customs for the port and district of Chicago, as by his complaint appears, and it being fit that the error, if any there has been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, you are hereby commanded, if judgment be given therein, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. 1890, in the Supreme Court to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right and according to the law and custom of the United States should be done.

Witness the Hon. Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 3rd day of February, in the year of our Lord one thousand eight hundred and ninety and of the Independence of the United States the 114th year.

[SEAL.] WM. H. BRADLEY,
Clerk of the Circuit Court of the United States for the Northern District of Illinois.

(Indorsed:) Supreme Court of the United States. Anthony F. Seeberger, collector of customs for the port and district of Chicago, plaintiff in error, *vs.* Leopold Schlesinger and David Mayer, copartners, &c., defendants in error. Writ of error. Copy deposited for the defendant in error in the clerk's office, U. S. northern district of Illinois.

26 UNITED STATES OF AMERICA,
Northern district of Illinois, ss:

To Leopold Schlesinger and David Mayer, copartners as Schlesinger and Mayer, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October, A. D. 1890, pursuant to a writ of error, filed in the clerk's office of the circuit court of the United States for the northern district of Illinois, wherein Leopold Schlesinger and David Mayer are plaintiffs and Anthony F. Seeberger, collector of customs for the port and district of Chicago, is defendant, to show cause, if any there be, why the error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Witness the Hon. Henry W. Blodgett, judge, this twelfth day of February, in the year of our Lord one thousand eight hundred and ninety.

H. W. BLODGETT,
Judge.

Service accepted.

PERCY L. SHUMAN,
Att'y for def't's in error.

2, 12, '90.

(Indorsed:) 21239. Supreme Court of the United States. Leopold Schlesinger et al. vs. Anthony F. Seeberger, coll'r. Citation to October term, A. D. 1890.

(Indorsed on cover:) No. 274. Anthony F. Seeberger, collector of customs for the port and district of Chicago, plaintiff in error, vs. Leopold Schlesinger and David Mayer, copartners as Schlesinger & Mayer. N. Illinois C. C. U. S. Filed October 17, 1890.

Office Supreme Court U. S.
FILED.
MAR 8 1894
JAMES H. McKENNEY,
CLERK

CASE No. 14304.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

ANTHONY F. SEEBERGER, COLLECTOR of the port of Chicago, plaintiff in error,
v.
LEOPOLD SCHLESINGER ET AL.
No. 274.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR PLAINTIFF IN ERROR.

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This was an action to recover duties paid under protest upon importations made in 1889, so that the case is governed by the tariff law of 1883. The action was tried before Judge Blodgett under a stipulation waiving a jury, as provided in sections 649 and 700 of the Revised Statutes. The judge decided in favor of the importer, and the collector assigns error.

The importations were of two entirely different classes of articles, namely, goatskin rugs and pearl opera glasses. The court decided in the importer's favor as to each class of goods, and made special findings setting forth the facts found and his conclusions of law therefrom.

STATEMENT OF FACTS.

The first importation in question is that of certain articles advertised and sold to some extent for floor rugs, also for sleigh and carriage robes, consisting of goatskins tanned with the hair on and sewn together so as to make parallelograms about 18 by 36 to 48 inches in dimensions. These skins are sometimes taken apart, or cut up for trimmings, etc.

The other importation was of opera glasses composed of shell, metal, and glass, the shell being the component material of chief value.

The facts will be more fully set forth in connection with the arguments as to these two importations, respectively.

ASSIGNMENT OF ERRORS.

Two errors are assigned:

First, to the court's finding or conclusion of law that the articles first above mentioned "should have been assessed by the collector at a duty of 20% ad valorem, as 'skins dressed and finished, etc.;'" and to the finding of the issue for the plaintiffs as to said skins (p. 10).

Second, to the finding or conclusion of law that the opera glasses should have been assessed for duty at the

rate of 25% ad valorem as "shells, whole, or parts of, manufactured, etc.;" and to the finding of the issue for the plaintiffs as to the said opera glasses (p. 11).

It will be argued that the court erred in refusing to hold that the goods were dressed furs on the skin rather than skins dressed and finished (p. 11); but this argument is covered by the first assignment of error above stated.

ARGUMENT.

The record contains no exceptions to the conclusions of law above stated. It would not have been proper practice to insert such exceptions. No exceptions are necessary in case of special findings by the court to raise the question whether the facts found support the judgment. (*St. Louis* v. *Ferry Company*, 11 Wall., 423, 428; *Tyng* v. *Grinnell*, 92 U. S., 467, 469; *Insurance Company* v. *Boon*, 95 U. S., 117, 125; *Allen* v. *St. Louis Bank*, 120 U. S. 20, 30, and cases cited). The record is somewhat peculiarly made up, the special findings being incorporated in the bill of exceptions. The findings, however, bear the same date as the judgment and bear a separate file mark. The fact, therefore, that the court seems to have taken them off the file, inserted the whole paper, including the file mark, in the midst of a bill of exceptions, and filed them again on the same day, can not affect their validity. The findings being complete, there is no reason for a new trial if we show them to be erroneous, but this court can direct the proper judgment to be entered thereon. (*Allen* v. *St. Louis Bank*, *supra*, at p. 40.)

I.

GOATSKIN RUGS.

The court finds that these articles were "Chinese goatskins dressed and finished" (p. 9):

> And from the proof in the case the court further finds that the goods in question were described in the invoice as "Chinese goatskins;" that they are tanned with the hair on so that the skin is soft and pliant; that some of the skins are whole or entire, but the articles imported are made of pieces of skins tanned as aforesaid, loosely sewn together so as to make large parallelogram-shaped pieces about 18 inches wide by 36 to 48 inches long; that they are advertised and sold to some extent for floor rugs, and are sometimes lined and trimmed for sleigh and carriage robes; that they are not always used in the shapes imported, but are sometimes cut apart at the seams, or cut into strips and dyed and used for trimming lap robes, overcoats, etc. (p. 10).

The court finds that the collector assessed these articles under paragraph 378, which paragraph the court undertakes to abbreviate for convenience in the findings, but fails to abbreviate correctly. The paragraph is as follows:

> Carpets and carpetings of wool, flax, or cotton, or parts of either or other material, not otherwise herein specified, forty per centum ad valorem; and mats, rugs, screens, covers, hassocks, bedsides, and other portions of carpets or carpetings, shall be subjected to the rate of duty herein imposed on carpets or carpeting of like character or description; and the duty on all other mats not exclusively of vegetable material, screens, hassocks, and rugs, shall be forty per centum *ad valorem*.

The court further finds that the plaintiffs in their protest claimed that the articles should be assessed under paragraph 461, which is as follows:

> Calfskins, tanned, or tanned and dressed, and dressed upper leather of all other kinds, and skins dressed and finished, of all kinds, not specially enumerated or provided for in this act, and skins of morocco, finished, twenty per centum *ad valorem*.

The bill of exceptions shows that at the trial the collector's counsel

> Requested the court, among other things, to hold that the plaintiff could not recover in this suit, because it appeared from the facts that the goods in question were dressed furs on the skin, under clause 450 of Heyl's arrangement of the tariff laws; and, further, that such claim was not covered by the plaintiff in his protest.

Paragraph 450, so referred to, is as follows:

> Hatters' furs, not on the skin, and dressed furs on the skin, twenty per centum *ad valorem*.

To this list we may add paragraph 435, which is as follows:

> Fur, articles made of, and not specially enumerated or provided for in this act, thirty per centum *ad valorem*.

(A) *Defective protest.* The importer's protest relied entirely upon paragraph 461 of the tariff law, and the importer must, therefore, be confined to that paragraph. The case comes completely within *Davies* v. *Arthur* (13 Blatchf., 34; 96 U. S., 148). In that case certain mer-

chandise was assessed at 60% as silk scarfs, under §8 of the act of June 30, 1864. The protest claimed that the goods were dutiable at 35% only as articles worn by men, women, and children or wearing apparel, under the acts of March 2, 1861, and July 14, 1862, and were "neither scarfs nor ready-made clothing in fact, or as known in trade or commerce." It appeared at the trial that the goods should have been classified as manufactures of silk not otherwise provided for under the section above cited from the act of 1864, but at 50%. This court, affirming the circuit court, held that the protest was not sufficient to justify a verdict for plaintiffs. The opinion of Mr. Justice Clifford is very full and closes with complete approval of the following propositions laid down by the circuit judge:

> That the plaintiffs are precluded from insisting that their importation was a manufacture of silk not otherwise provided for, and subject to a duty of 50 per cent instead of 60, when by their protest, they allege it to be wearing apparel, etc., subject to a duty of 35 per cent (p. 153).

To the same effect, among recent decisions, are *Chung Yune* v. *Kelly* (8 Sawy., 415); *Herman* v. *Robertson* (41 Fed. Rep., 881); *In re Austin* (47 Fed. Rep., 873); *In re Collector of Customs* (55 Fed. Rep., 276). The principle is that the collector must be apprised of the protestant's claim, and when the protest is based upon a stated provision of statute, he is not required to look beyond it. The protestant is subjected to a *quasi*-estoppel or waiver, analogous to that of the exceptant who specifies one, and the wrong, ground of exception. (*Evanston* v. *Gunn*, 99

U. S., 660, 665, and cases cited; *Belk* v. *Meagher*, 104 U. S., 279, 289.)

Nothing in *Arthur* v. *Morgan* (112 U. S., 495) conflicts with this decision. That was a peculiar case. The article in question was a carriage imported by a lady returning from Europe, who claimed in her protest that it was entitled to free admission as "personal effects in actual use," and used "over a year." As a matter of fact, the carriage was not "personal effects," but "household effects." On the other hand, "personal effects" are not required to be "in use" or to have been used "not less than one year." The use of these latter phrases showed unmistakably that the word "personal" was a clerical error, the complaint intending the word "household." The protest was, therefore, sustained on the ground that it showed "fairly that the objection afterwards made at the trial was in the mind of the party and was brought to the knowledge of the collector."

The fact that the proper duty is no greater than the duty as claimed by the importer at the time is of no consequence if he stands upon the wrong provision of statute. By his error in specification the Government is led into errors of administration in this and probably also numerous other cases. The Government thus not only is put to great loss in the matter of interest, but its fiscal affairs are disarranged, and commerce itself also suffers indirectly. The correct duty was no greater than the duty claimed as correct in the protests in *Chung Yune* v. *Kelly*, *In re Austin*, and *In re Collector of Customs*, *supra*, and was even less in *Herrman* v. *Robertson*, *supra* (No. 280 of this calendar.)

The collector was therefore entitled to judgment under the statement of facts, if the articles therein described were properly dutiable under paragraph 378, 450, or 435.

(B) *Paragraph* 378. It is respectfully submitted that the reasons assigned in Judge Blodgett's opinion for excluding paragraph 378 are founded upon oversight.

His opinion is printed at pages 7 to 8 of the transcript of record. He thinks "that these articles are not so *exclusively* used for rugs and applied to that use as to make them dutiable as rugs." The statute, however, contains no test of exclusive use. If the articles are actually rugs, it is immaterial whether they are exclusively used for that purpose or not. The story is familiar of the nobleman who exported a cargo of warming pans to the West Indies for sale. He was laughed at for his pains, but the venture turned out a success, for the natives eagerly purchased the articles for use as cooking utensils. They were, nevertheless, however, warming pans and would have been subject to duty as such. Even in the hat trimmings cases (*Cudwalader* v. *Wanamaker*, 149 U. S., 532, and cases cited; *Walker* v. *Seeberger*, 149 U. S., 541; *Hartranft* v. *Meyer*, 149 U. S., 544), where the word "used" is contained in the statute, the test was not exclusive use but chief use. No such question, however, arises under the present statute.

The court shows by its findings as well as by its opinion that it interprets the word "rugs" as equivalent only to "floor rugs," and does not include in it sleigh or carriage robes (Findings, p. 10) or even door mats or vestibule mats (Opinion, p. 7). It is familiar to all, however, that sleigh

and carriage robes as well as door mats of this nature are familiarly called rugs. In fact Worcester shows that the word was used as the equivalent of "a coarse coverlet for a bed" as long ago as the time of Swift.

Webster defines the word as follows (omitting its primary and obsolete signification):

> A piece of thick, nappy fabric commonly made of wool, used for various purposes, as for covering and ornamenting part of the bare floor; for hanging in the door as a curtain; for protecting a portion of carpet; for a wrap to protect the legs from cold, etc.

The Century Dictionary defines it as follows (also omitting the obsolete signification):

> A thick, heavy covering, ordinarily woolen, and having a shaggy nap; a piece of thick nappy material used for various purposes: (*a*) a covering for a bed; a blanket or coverlet; (*b*) a covering for the floor; a mat, etc.; (*c*) a lap robe; a thick shawl or covering used in driving, traveling, etc., as a protection against the cold.

While these definitions do not specifically mention fur rugs, but undoubtedly, in specifying woolen as the ordinary material, point out the most ancient use of the term, coming from its original and obsolete signification of "a rough, heavy woolen fabric," nevertheless the definitions do not exclude fur; and the common use of the word in connection with tigerskins, etc., is familiar and can be judicially noticed. A traveling rug, moreover, is as familiar as a floor rug and more familiar than a bed rug, which is probably the earliest in use of the three. Traveling rugs were held to be rugs within this paragraph in *Ingersoll* v. *Magone* (53 Fed. Rep., 1008).

Judge Blodgett also points out that:

> The clause under which the collector assessed them for duty is found in Schedule K, which in terms is intended to include "wool and woolen goods."

The Judge then proceeds to say:

> Certainly these are neither wool nor manufactures of wool, but come much more naturally within the group of goods called "sundries," etc.

This seems to be a yet more remarkable oversight. Schedule K is, indeed, headed "Wool and woolens," but it opens with the following words: "All wools, hair of the alpaca, goat and other like animals, shall be divided for the purpose of fixing duties," etc.

This very paragraph 378 begins with the words "Carpets and carpetings of wool, *flax, or cotton*, or parts of either *or other material*, not otherwise herein specified." The next preceding paragraph relates to "*hemp or jute carpetings*." It thus appears: first, that for the general purposes of the schedule goat hair is classed as a wool; and second, that the schedule in its relations to carpetings was intended to include all materials, vegetable as well as animal, and that the rule *ejusdem generis* is not applicable to this paragraph. (*Robertson* v. *Edelhoff*, 132 U. S., 614, 617.)

These articles had been classified as rugs by the published decisions of the Treasury Department long prior to the act of 1883. (Syn. Dec. 2825, 3063, 5484.) This should settle all ambiguities, according to the authorities cited under C. *infra*.

If these articles are not strictly rugs, are they not mats within the same paragraph? The dictionary definitions of mat do not specifically include skins, but the Century Dictionary says: "The skin of an animal with thick hair or wool is sometimes used as a mat." If they are not mats, why are they not covers within the same paragraph of the statute?

If the articles in question are properly dutiable within the meaning of the term mat, rug, or cover under paragraph 378, and come also within the meaning of paragraph 450 or 461, then they are dutiable under paragraph 378, because that imposes the higher of the two rates of duty. Prior to the act of 1883, indeed, it had been a canon of construction as to tariff acts that, other things being equal, the courts should lean toward the importer. (*United States* v. *Wigglesworth*, 2 Story, 369; *Hartranft* v. *Wiegmann*, 121 U. S., 609, 616; *United States* v. *Isham*, 17 Wall., 496; *Partington* v. *Attorney-General*, L. R. 4 H. L. 100.) But the act of 1883 overthrew this maxim and enacted the precise opposite. It was no doubt within the power of Congress to abolish a well-known rule of construction. (*Arthur* v. *Morrison*, 96 U. S., 108, 112.) Amending the well-known section 2499 of the Revised Statutes, Congress inserted the following new provision:

> If two or more rates of duty should be applicable to any imported article, it shall be classified for duty under the highest of such rates.

This amendment was intended to apply precisely to a case like the present; that is, to a case where the same

article answered two different descriptions in the tariff laws. (*Liebenroth* v. *Robertson*, 144 U. S., 35, 40; *Dieckeshoff* v. *Robertson*, 40 Fed. Rep., 568.) The old rule is referred to *obiter* as still existing in *Earnshaw* v. *Cadwalader*, 145 U. S., 247, 262; but this, it is submitted, must be regarded as an inadvertence.

(C) *Paragraph* 450. But if the articles are covered only by Schedule N and not by Schedule K, still they do not fall under paragraph 461.

It is plain that paragraph 461 does not apply to skins with the hair or fur on. *Noscitur a sociis*, or the rule *ejusdem generis*, is a familiar canon of interpretation in tariff laws, as everywhere else. (*Adams* v. *Bancroft* 3 Sumner, 384; *Hollender* v. *Magone*, 149 U. S., 586.) "Skins dressed and finished" in this paragraph are joined with "calfskins, tanned, or tanned and dressed, and dressed upper leather of all other kinds," and also with "skins of Morocco finished." The whole paragraph is evidently an exception to the immediately preceding paragraph relating to "Leather, bend or belting leather, and Spanish or other sole leather, and leather not specially enumerated or provided for in this act." The interpretation of these two paragraphs is made much more clear by referring to their original form in § 2504 of the Revised Statutes. The two there form but one paragraph, beginning with the word "Leather" used as a heading only, followed by a period and dash. In drawing up the act of 1883, the period and dash were transformed into a comma, thus

making the curious apparent tautology in paragraph 460. The whole paragraph in the Revised Statutes is is follows:

> LEATHER.—Bend or belting-leather, and Spanish or other sole leather, 15 % *ad valorem;* calf-skins tanned, or tanned and dressed, 25 % *ad valorem;* upper-leather of all other kinds, and skins dressed and finished of all kinds, not otherwise provided for, 20 % *ad valorem;* skins for morocco, tanned but unfinished, 10 % *ad valorem;* manufactures and articles of leather, or of which leather shall be a component part, not otherwise provided for, 35 % *ad valorem.*

"In commercial and popular usage leather does not include skins dressed with the hair or fur on." (Century Dictionary.) Such skins are known as goat-skins, tiger-skins, etc. They are not leather, and not within the intent of the two leather paragraphs.

These Chinese goatskins, if not articles made of fur under paragraph 435, are plainly described by paragraph 450 of the act of 1883 as "dressed furs on the skin." This comes from a separate paragraph of the Revised Statutes. The hair may not be short and close enough to come within the stricter definition of fur, but the stricter scientific definition is not the one in more common use. Thus, reference to Ure's Dictionary of Arts, etc., or to the ordinary Encyclopedias will show that such skins as bear-skins are commonly classified under furs; and as long ago as the case of *Astor* v. *Union Insurance Company*, 7 Cowen, 202, it was proved that bearskins were commercially known as furs. The Encyclopedia Britannica also classifies buffalo skins, Angora and Astrakhan sheepskins,

etc., as furs, and the Chinese goatskins are probably omitted from that list only on account of their comparatively recent introduction into western markets.

Even if the Chinese goatskins are not strictly furs, yet as they are very similar to furs, and as they are altogether out-side of the intent of the leather paragraphs, they would be dutiable (assuming that schedule K is not *per se* applicable) either under that schedule through the similitude clause (Rev. Stat., § 2499; compare *Pickhardt* v. *Merritt*, 132 U. S., 252, 258–9), or under the general clause as manufactures not otherwise provided for (Rev. Stat., § 2513; compare *DeForest* v. *Lawrence*, 13 How., 274, 282).

The Treasury Department, not considering it necessary to decide directly whether or not such skins are in the strict sense furs, has always classified them with furs under the similitude clause. It has thus classed with furs, if not among them, lambskins (August 5, 1870, Syn. Dec., 717; September 9, 1879, Syn. Dec., 4185; May 29, 1888, Syn. Dec., 8867), tigerskins and cheetah skins (November 22, 1889, Syn. Dec., 9731), and even gooseskins (August 23, 1881, Syn. Dec., 4974). Secretary Fairchild applied the same classification to goatskins "in pursuance of a principle now established not to change existing and well-established rules of classification except for very grave and serious reasons. No such reasons were apparent in the case in question." (August 5, 1885, Syn. Dec., 7063, following decision of December 20, 1883, Syn. Dec., 6078.) These rulings were followed by the

general appraisers as to lambskins (Syn. Dec., 10324) tiger and leopard skins (Id. 10795) and gooseskins (Id. 12838). These rulings seem never to have been reversed or even questioned until the present case.

In the unreported case of *In re Fleet* in January, 1892, both parties admitted lambskins to be furs. (Id. 12755.)

Long settled Treasury construction must have great, if not controlling, weight in cases of ambiguity (*Robertson* v. *Downing*, 127 U. S., 607, 613, and cases cited). But as the construction dates from 1870—for certainly goatskins class with lambskins—and no qualifying clauses have been inserted in the Revised Statutes or in the act of 1883, it is presumable that Congress approved of the construction thus given. Not only is it presumable that Congress enacts each tariff law with the departmental interpretation of its predecessor kept in view, but as a matter of fact we all know that it actually does so. New clauses are always added to guard against interpretations disapproved by the legislative branch. Reenactments of statutory language that has been judicially interpreted carry with them the judicial interpretation that has been given (*Dollar Savings Bank* v. *United States*, 19 Wall., 227, 237; *The Anna L. R.* 1 *P. D.*, 253, 259; *McDonald* vs. *Hovey*, 110 U. S., 619, and cases cited; *Metropolitan R. R. Co.* vs. *Moore*, 121 U. S., 558, 572.) To a lesser degree the presumption is that Congress adopts past publicly known departmental interpretation (*Maddux* vs. *United States*, 20 Ct. Cls., 193, 198), for departmental interpretation differs from judicial interpretation only in weight (*Schell's Exrs.* vs. *Fauché*, 138 U. S., 562, 572).

This rule of construction, as laid down by Attorney-General Garland (18 Op., 530, 532), received the approval of this court in *Earnshaw* v. *Cadwalader* (145 U. S., 247, 258.)

(D.) *Paragraph* 435. But as the articles not only are fur, but are manufactured, that is, finished to such an extent that they are sold and used in the condition as imported, it is submitted that if not rugs they were dutiable as articles made of fur under paragraph 435, at 30 per cent ad valorem. This construction would be in conformity with the decision of the general appraisers in the matter of the lambskin coat linings. (Syn. Dec. 10324, September 24, 1890.) In the dental rubber case, *Junge* v. *Hedden*, 146 U. S., 233, Chief Justice Fuller said that the word "articles" "must be taken comprehensively and cannot be restricted to articles put in condition for final use." These "rugs" are used as materials or sold to the consumer without further alteration, as the case may be. The case is much stronger, therefore, than that of *Junge*.

II.

PEARL OPERA GLASSES.

The court finds that plaintiffs also imported certain shell-covered opera glasses (p. 10).

> And from the proof in said cause the court further finds that said opera glasses are composed of silver or nickel-plated metal tubes, fitted to slide within each other, and held together by a metal framework or connections, said tubes containing glass lenses properly fitted therein, and that said tubes are inclosed in a cover of polished mother-of-pearl; that the shell,

when manufactured or brought to the proper shape for such covering and properly polished, costs more than the glass lenses and metal tubes and frame when finished ready to be combined with said pearl to make a complete opera glass (p. 11).

There is no provision in the tariff law of 1883 relating to opera glasses; nor is there any paragraph in any way applicable thereto excepting the general provisions relating to manufactures of different materials. The provisions relating to glass, metal, and shell are as follows:

Section 2499 (as amended in 1883): * * * and on all articles *manufactured from two or more materials* the duty shall be assessed at the highest rates at which the *component material of chief value* may be chargeable.

Schedule B (paragraph 143): Porcelain and Bohemian glass, chemical glass-ware, painted glass-ware, stained glass, and all other *manufactures of glass* or of which glass shall be the component material *of chief value*, not specially enumerated or provided for in this act, 45 per cent ad valorem.

Schedule C (paragraph 216): Manufactures, articles, or wares, not especially enumerated or provided for in this act, *composed wholly or in part of* iron, steel, copper, lead, nickel, pewter, tin, zinc, gold, silver, platinum, or any other *metal*, and whether partly or wholly manufactured, 45 per cent ad valorem.

Schedule N (paragraph 486): *Shells*, whole or parts of, manufactured, of every description, not specially enumerated or provided for in this act, 25 per cent ad valorem.

The glass provision is plainly inapplicable, because these are not manufactures of glass alone, nor are they

manufactures of which glass is the component material of chief value. The law has been changed since *Arthur* v. *Sussfield*, 96 U. S., 128.

The shell provision is also inapplicable. These articles are not shell manufactured. The provision does not expressly cover manufactures of which shell is a component material. It is clearly intended to apply only to articles entirely made of shell, or at most to articles of which shell is substantially the only constituent.

The metal provision is, however, plainly applicable, because it applies to all manufactures in part of metal, whether or not metal is the component material of chief value. This provision was therefore applied by the collector (p. 10).

The importer protested, however, and based himself on that clause of § 2499 of the Revised Statutes, as amended by the tariff law of 1883, which reads as follows:

> * * * and on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which the component material of chief value may be chargeable.

This position was sustained by the court (p. 11), and the opera glasses, therefore, assessed for duty at the shell rate, since shell was the component material of chief value.

The question whether such opera glasses should be governed by the metal clause or by section 2499 was touched upon in the argument in *Seeberger* v. *Hardy* (150 U. S., 420, 424), but the court disposed of the point by saying:

> As this question was not raised by the record, and no instruction was asked of the court based upon this interpretation, we do not find it necessary to express an opinion upon the subject.

It is respectfully submitted that the court fell into a plain error on the trial in the case at bar. Paragraph 216 is demonstrably more specific than § 2499. It substantially provides a rate of duty for "an article composed of two or more materials, one of which is metal." This is, of course, more specific than the simple phrase, "articles manufactured from two or more materials." (*Mason* v. *Robertson*, 139 U. S., 624, 626–627, and cases cited by Mr. Justice Gray.)

If it be necessary to cite any further authority upon this point, we may quote the words of Mr. Justice Bradley in *Solomon* v. *Arthur* (102 U. S., 208, 212), quoted and approved by this court, speaking through Mr. Justice Brewer, in *Hartranft* v. *Meyer* (135 U. S., 237), as follows:

> It is observable that the description of 'manufactures made of mixed materials, in part of cotton, silk," etc., is more general than that of "manufactures of which silk is the component part of chief value." Logically, the two phrases, standing together in the same act or system of laws, would be related as follows: "Goods made of mixed materials, cotton, silk, etc., shall pay a duty of 35 per cent; but if silk is the component part of chief value, they shall pay a duty of 50 per cent." (See also *Fisk* v. *Arthur*, 103 U. S., 431, 433.)

Defendant in error will doutless rely on the case of *Liebenroth* v. *Robertson*, 144 U. S., 35. This case has a superficial resemblance, but careful examination shows that it is entirely inapplicable. The peculiarity of the *Liebenroth* case was that there were three statutory enumerations equally applicable to the articles then before the court, which

were photographic albums made of paper and leather, with metal or plated clasps. These albums might have been dutiable under the metal clause above quoted; under Schedule N, as "articles * * * of which leather shall be a component part:" or under Schedule M, as "paper, manufactures of, or of which paper is a component material." Here, therefore, the principle of *Solomon* v. *Arthur* could not be applied. There was not simply one, there were three descriptions, each more specific than that of § 2499, each applicable to the articles in question, but all three in conflict with each other. Neither material seems to have been considered of such controlling importance as to bring the case within *Arthur* v. *Sussfield*, *supra*. It was admitted, therefore, that § 2499 must be resorted to for the decision of the case. The only question before the court in that case (as in *Arthur* v. *Fox*, 108 U. S., 125, as explained in *Mason* v. *Robertson*, *supra*, at p. 628) was as to which portion of § 2499 should be applied. The lower courts had applied the clause that "if two or more rates of duty should be applicable to any imported article, it shall be classified for duty under the highest of such rates." This court ruled that the prior clause, relating to "articles manufactured from two or more materials," was the one which was applicable. It seems entirely clear that the parties and court were correct in assuming that § 2499 was the only section possibly applicable in that case, which, therefore, has no relevance to the case at bar.

Precisely similar was the case of *Hohenstein* v. *Hedden* (38 Fed. Rep., 94), where the paper and metal clauses were equally applicable, so that the court were remitted to

§ 2499. On this account the Attorney-General confessed error in this court on March 13, 1893, the circuit court having applied the wrong clause of § 2499, following its own previous erroneous decision in the *Liebenroth* case.

On the other hand, recent decisions of this court establish the doctrine that § 2499 applies only to nonenumerated articles, and that "manufactures of * * * " is an enumeration; and therefore that articles so enumerated can not be classified for duty under § 2499. (Cases cited in *Mason* v. *Robertson*, 139 U. S., 624, 626–627; *Rossman* v. *Hedden*, 145 U. S., 561, 568.)

The lower courts are in conflict on this point. The Government's position was fully sustained by Judge Thayer in *Aloe* v. *Churchill* (44 Fed. Rep., 50). Contrary rulings were made by Judge Lacombe in an unreported decision, and by the circuit court of appeals of the seventh circuit, in *United States* v. *Manassee* (56 Fed. Rep., 828.) In both of these cases the courts considered themselves constrained by the *Liebenroth* case above discussed. In the Manasse case the court fell into further misapprehension, saying that a like decision had been made by Judge Blodgett in *Young* v. *Spalding* (24 Fed. Rep., 87). This was incorrect. No such question was raised in *Young* v. *Spalding*, where the articles, as appeared by the opinion of the court, had been classed by the collector himself under § 2499, and the point at issue was whether the shell or metal was the component material of chief value. The question seems never to have been raised by proper action on the part of the collector in the Chicago customs district until the time of the importations here appealed

from, and for that reason the point could not be brought before the court either in *Young* v. *Spalding*, *supra*, or in the subsequent cases of *Young* v. *Spalding* and *Hardy* v. *Seeberger*, recently disposed of by this court.

It may be remarked that the opera glasses in question are not the more "shell * * * manufactured," because the shell in these particular glasses is found to cost more than all the rest of the article put together. The shell is still a mere incident, and the metal and glass the essential parts of the instrument. In the glasses under consideration in *Seeberger* v. *Hardy* and *Spalding* v. *Young*, the record showed that the shell did not vary very far in value from the metal alone, and in some instances the metal was even more valuable than the shell.

For the above reasons it is respectfully submitted that the judgment should be reversed and judgment directed for the collector.

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Supreme Court of the United States.

OCTOBER TERM, 1893.

TERM No. 274.

ANTHONY F. SEEBERGER, Collector of Customs for the Port and District of Chicago,

Plaintiff in Error,

vs.

LEOPOLD SCHLESINGER and DAVID MAYER, copartners, as SCHLESINGER & MAYER.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

BRIEF FOR DEFENDANTS IN ERROR.

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UNITED STATES SUPREME COURT.

ANTHONY F. SEEBERGER, Collector of Customs for the Port and District of Chicago, Plaintiff in Error,

vs.

LEOPOLD SCHLESINGER and DAVID MAYER, copartners as Schlesinger & Mayer.

No. 274.

Condition of the Record.

There is no assignment of errors in this record, as required by Section 997 of the Revised Statutes.

Under the decisions of this Court cited on page 3 of the brief for plaintiff in error, no bill of exceptions was necessary in the case. Plaintiff in error chose to file one, however, and the bill of exceptions so filed and found on pages 9, 10, 11 of the record, contains only one exception (Rec., fol. 23), and that relates only to the goatskins. The opinion of Judge BLODGETT (Rec., fols. 13-15) relates only to goatskins. It is manifest that when this appeal was taken there was no idea of reviewing the ruling as to the opera-glasses, and there is not a syllable in the record to show that the points now urged as to the opera-glasses or any one of them was ever called to the attention of the Court below. The facts set forth in the special findings must be suffi-

cient to support the judgment, for they are precisely the same as the facts proven to the juries whose verdicts formed the basis of the judgments in Seeberger vs. Hardy and Spalding vs. Young, which were affirmed by this Court at this term, 150 U. S., 420. There, as here, it was attempted to argue questions in this Court not raised below.

The Goat-Skins.

(A) These were clearly not dutiable as rugs as assessed. So unreasonable was this claim that it was abandoned on the trial, the plaintiff in error there claiming that the articles were "dressed furs on the skin" (Rec., fol. 23). The only basis for claiming them *to be* rugs is that "they are advertised and sold to some extent *for* floor rugs." This language, supplemented by the statement "that they are not always used in the shapes imported, but are sometimes cut apart at the seams, or cut into strips and dyed and used for trimming lap robes, overcoats," &c., shows that the articles probably required further manufacture to make them into rugs when they were to be used for that purpose. While it is true that articles to be dutiable as rugs need not be exclusively used for that purpose, they must be chiefly or commonly used for that purpose, and their occasional use cannot determine their classification. To adopt the warming-pan illustration of the counsel for the Government, warming-pans, if provided for in the tariff, would not be dutiable as cooking utensils because of an occasional use of them for that purpose.

The decisions of the Treasury Department cited by the Attorney-General are of no value as authorities, for it is pure assumption that the articles therein referred to were identical with, or similar to, those in the case at bar. Indeed, an examination of them will show that the facts therein recited and based on the *ex parte* statements of subordinate Government officials

are very different from those found by Judge BLODGETT in the case at bar.

To the suggestion that these articles, if not strictly rugs, may be dutiable as mats or covers under the same paragraph of the statute (a suggestion made for the first time in this Court), it is sufficient to say that if they are not rugs *a fortiori* they are not mats; and as for the broad term covers, it must be quite obvious that that term, as used in the paragraph, is used in some technical or restricted sense, and what that meaning is the Court has no information, for the reason that, no such claim having been made below, no trade testimony was taken to show the commercial significance of the term.

(B) The articles cannot properly be held dutiable as "dressed furs on the skin" under paragraph 450. There is no finding that the articles are fur in fact, or are commercially classed as fur, or are even assimilated to fur. These are all matters which might have been made the subject of evidence and findings in the Court below, but there is no finding on the subject. This Court is asked to take judicial notice of a lot of facts that should have been brought out in the Court below, if it was intended to rely on them. Moreover, the Attorney-General seems to have forgotten, in this part of his brief, the fact to which he had previously called attention, that the statutes have always classed goat-hair with wool, and not as fur. Thus, as far back as the Wool Act of 1867 (14 U. S. Stat. at Large, p. 59), we find the provision: "All wools, hair of the alpaca, goat, and other like animals, as aforesaid, shall be divided for the purpose of fixing the duties to be charged thereon into three classes—to wit;" and similar language is used in the revision and in the Acts of 1883 and 1890. If goat-hair is not fur, how can a goat-skin with the hair on be a dressed fur on the skin? This statutory distinction between goat-hair and fur must control the construction of the statute.

De Forest vs. Lawrence, 13 How., 274.

The similitude clause cannot be invoked to make these articles dutiable as dressed furs, on the skin, for that clause applies only to nonenumerated articles, and these articles are enumerated.

Butterfield vs. Arthur's Executors, 125 U. S., 27.
Rossman vs. Hedden, 145 U. S., 561.

The Treasury decisions relied on by the Attorney-General on this branch of the case are none of them about goat-skins except one (7063) by Secretary Fairchild, and that was after the passage of the law now under consideration, and, can hardly be dignified as a "long-settled Treasury construction." The assumption of the Attorney-General that "certainly goat-skins class with lamb-skins" seems to be a pure *ipse dixit*. Certainly goat skins do not class with lamb-skins as much as sheep-skins do, yet he would hardly claim a sheep skin with the wool on to be "dressed fur on the skin."

If the Court should hold these goat-skins to be dressed furs on the skin, the importer is entitled to recover under his protest within the ruling of this Court in

Arthur vs. Morgan, 112 U. S., 495.
Heinze vs. Arthur's Executors, 144 U. S., 28.

(C) As the goat-skins are not fur they cannot be articles made of fur, under paragraph 435.

(D) The articles were properly dutiable as skins dressed and finished as held by the Court below.

It is not disputed by the plaintiff in error that these are goat-skins dressed and finished. The only reason assigned by him for excluding them from paragraph 461 is that that paragraph, according to his contention, applies only to leather, under the principle of *noscitur a sociis*.

The Treasury Department, for whose authority counsel for plaintiff in error has so much respect, has

not so construed the law. On January 7, 1876, Secretary Bristow issued the following circular (S. S. 2584):

TREASURY DEPARTMENT, January 7, 1876.

SIR—Your letter of the 16th ultimo is received, further reporting on the appeals (6799 *d* and 6800 *d*) of C. A. Herpich & Co., from your decision assessing duty at the rate of 25 per cent. *ad valorem* on certain so-called dressed furs, imported per "Algeria," September 23, and "Idaho," October 6, 1875, which the importers claim to be dutiable at the rate of 20 per cent. *ad valorem*.

It appears from the special report of the appraiser and an examination of samples that the goods in question consist of sheepskins with the wool on, tanned and dressed, intended for use either as mats or for being cut up into strips, or otherwise, for trimmings.

Under these circumstances the Department holds that as the said skins are similar to those which were the subject of Department's decision of May 27, 1875 (Synopsis 2269), excepting that they are a little further advanced in manufacture, they are liable to the same rate of duty, viz., twenty-five per cent *ad valorem*, under the provision (Heyl, 1321) for "skins tanned not otherwise provided for."

This provision has been held by the Treasury Department to apply to swan and goose skins with feathers on (S. S., 724) and dressed goose skins with the down on the pelt (S. S., 4974).

It is pertinent to inquire under what clause of the tariff law skins of animals imported with the hair on (not fur) are dutiable if not under the one now under consideration.

Reference is made by the Attorney-General to the fact that in the Revised Statutes the paragraph in which this provision is found is headed "Leather." The paragraph is not so headed in the Act of 1883, and the contention is somewhat startling that the change

of a law by striking out the heading makes the heading more applicable than if it had been left in.

Junge vs. Hedden, 146 U. S., 233.

Headings in tariff laws are of little significance. The Attorney-General in his brief in this case has called attention to the fact that the schedule entitled "wool and woolen goods" provides for "hemp and jute carpetings." The cotton schedule of the same act provides for "corsets of whatever material composed," and hundreds of such illustrations might be given.

The principle of *ejusdem generis* is one which will furnish a key to the interpretation of many tariff provisions, but is entirely inapplicable to the one in the case at bar.

(E) The Attorney-General lays down the startling proposition that the Act of 1883 overthrew the canon of construction that other things being equal the Courts should lean to the importer, and enacted the precise opposite. A ruling to the contrary in Earnshaw vs. Cadwalader, 145 U. S., 247, he says must be regarded as an inadvertence. The canon of construction has been held to be still in force and applicable to the Acts of 1883 and 1890.

By the Circuit Court of New York in McCoy vs. Hedden, 38 Fed. Rep., 89.

By the Circuit Court of Delaware in *In re* Whitney, 53 Fed. Rep., 235, 238.

By the Circuit Court of Appeals for the 8th Circuit in United States vs. Davis, 54 Fed. Rep., 147, 149, and by this Court in American Net & Twine Co. vs. Worthington, 141 U. S., 468.

Must these all be regarded as inadvertences?

The provision of Section 2499 about articles subject to two or more rates of duty refers only to cases where the two rates of duty are *equally applicable*, and has not

abrogated the well-settled rule of construction that a specific provision overrides a general one.

Magone vs. King, 1 U. S. Appeals, 267.

The Opera-Glasses.

We have already called attention to the fact that this branch of the case is not in our view properly before this Court for review. But if the Court concludes to pass on the questions raised as to these articles in the brief of the Attorney-General, we submit the following:

The finding of the Court on this subject is as follows:

"And from the proof in said cause the Court further finds that said opera-glasses are composed of silver or nickel-plated metal tubes, fitted to slide within each other, and held together by a metal framework or connections, said tubes containing glass lenses properly fitted therein, and that said tubes are enclosed in a cover of polished mother-of-pearl; that the shell, when manufactured or brought to the proper shape for such covering and properly polished costs more than the glass lenses and metal tubes and frame when finished ready to be combined with said pearl to make a complete opera-glass.

"I therefore find from the proof that the shell is the component material of chief value in the opera-glasses in question."

These articles, being "articles manufactured from two or more materials," were clearly dutiable under the following provision of Section 2499 of the Revised Statutes, as amended by the Act of October 1st, 1883:

"And on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which the component material of chief value may be chargeable."

Hartranft vs. Meyer, 135 U. S., 237.
Liebenroth vs. Robertson, 144 U. S., 35.
In re Rosenthal, 56 Fed. Rep., 824.
In re Shattuck, 54 Fed. Rep., 365.

The two last-mentioned decisions have recently been affirmed by the Circuit Court of Appeals (decisions not yet published).

The Attorney-General contends (p. 19 of his brief):

"Paragraph 216 is demonstrably more specific than Section 2499. It substantially provides a rate of duty for 'an article composed of two or more materials, one of which is metal.' This is, of course, more specific than the simple phrase, 'articles manufactured from two or more materials' (Mason vs. Robertson, 139 U. S., 624, 626 627, and cases cited by Mr. Justice GRAY)."

There is a very patent fallacy underlying this argument. Of course paragraph 216 is more specific than Section 2499; so is paragraph 143; so is paragraph 486. So is every other of the eight or nine hundred enumerations in the Tariff Schedules. Section 2499 is not an enumeration at all. *It is a rule of law, or principle of construction ordaining how a choice shall be made between several enumerations.* It would be rendered wholly nugatory by holding that because any one of the enumerations as to which it regulates the principle of selection was more specific than itself, some one of the enumerations should be selected on the ground that a specific provision overrides a general one.

The cases of Mason vs. Robertson and Solomon vs. Arthur, relied on by the plaintiff in error, are not in point. In the former the Court was dealing with the language: "There shall be levied, collected and paid on each and every non enumerated article which bears a similitude, etc.," and not with the language: "And on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which the component material of chief value may be chargeable;" and the article in question was not composed of two or more materials. In the latter the Court was choosing between the two following *enumerations in the dutiable schedules:*

"Manufactures, not otherwise provided for, composed of mixed materials, in part of cotton, silk, wool or worsted, or flax."

"Manufactures of silk, or of which silk is the component material of chief value, not otherwise provided for, fifty per centum *ad valorem*."

One of which was obviously, as pointed out by the Court, more specific than the other.

In Hartranft vs. Meyer (135 U. S., 237) the Court (per Mr. Justice BREWER) called attention to the significant change in the phraseology of Section 2499 by the amendment of the Act of 1883, the Revised Statutes reading: "And on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which any of its component parts may be chargeable;" and the Act of 1883: "And on all articles manufactured from two or more materials the duty shall be assessed at the highest rates at which the component material of chief value may be chargeable," and recognized it as showing the intent of Congress as to goods composed of two or more materials.

Any uncertainty or confusion that may have existed upon this question was finally settled by the case of Liebenroth vs. Robertson (144 U. S., 35), and *that case, we submit, is absolutely decisive of the case at bar*, notwithstanding the very able and ingenious effort made by the counsel for plaintiff in error to distinguish it. That case settled the principle that the provision in Section 2499 applied to articles composed of two or more materials, and furnished the rule for their classification, notwithstanding there were one or more enumerations in the dutiable schedules under which they might be classified.

The goods in that case were albums composed of leather and paper, the latter the component material of chief value. The Tariff Act contained the two following provisions:

"All manufactures and articles of leather, or of which leather shall be a component part, not specially

enumerated or provided for in this act, thirty per centum *ad valorem*."

"Paper, manufactures of, or of which paper is a component material, not specially enumerated or provided for in this act, fifteen per centum *ad valorem*."

It would have been idle for any one to contend that these goods were not enumerated. They were doubly enumerated. The Court, per Mr. Justice BLATCHFORD, said:

"The change in the later enactment of Section 2499, of the duty on 'all articles manufactured from two or more materials,' from a duty 'at the highest rates at which any of its component parts may be chargeable' to a duty 'at the highest rates at which the component material of chief value may be chargeable,' *is very significant*, especially considered in connection with the new provision in the later Section 2499, that, 'if two or more rates of duty should be applicable to any imported article, it shall be classified for duty under the highest of such rates.' There was clearly a new classification provided for as to '*all articles manufactured from two or more materials*,' based upon the highest rate chargeable on 'the component material of chief value;' and the further new provision was added, imposing the highest rate of duty where two or more rates of duty were applicable to an article. This last provision was not properly applicable, under Section 2499, to an article 'manufactured from two or more materials,' and it had sufficient scope if applied to articles not manufactured from two or more materials, but still *prima facie* subject to 'two or more rates of duty.'"

There was nothing said in this opinion about "three statutory enumerations equally applicable to the articles then before the Court." On the contrary, the Court held they were not equally applicable; that the only one applicable by virtue of Section 2499 was the one providing for the material of chief value. That is just what Judge BLODGETT has decided here. It is unreasonable to contend that the shell provision is inap-

plicable because the language is shells and parts of, manufactured, and not manufactures of shell. This Court has held in Hartranft vs. Wiegmann, 121 U. S., 609, that so long as articles are still shells they are not dutiable under this provision at all, but are free as shells unmanufactured. They do not become shells manufactured for purposes of duty until they have ceased to be shells and become manufactures of shell. Would the Attorney-General contend that a box made of shell and pasteboard, shell composing eighty or ninety per cent. of the value, was only dutiable at 15 per cent. as a manufacture of which paper was a component material? That is the logical deduction from his reasoning.

The decision of this Court in the album case has been followed and applied to this identical merchandise (shell opera-glasses) in United States vs. Manassee, 56 Fed. Rep., 828, by the Court of Appeals for the Seventh Circuit, as well as by Judge LACOMBE in an unreported case in the Circuit Court at New York (referred to on p. 21 of Attorney-General's Brief). A judgment based on precisely the same construction of the law as to this identical merchandise has recently been affirmed by this Court (Seeberger vs. Hardy, 150 U. S., [illegible]). The Circuit Court decision in Aloe vs. Churchill was before the decision in Liebenroth vs. Robertson.

Benziger vs. Robertson, 122 U. S., 211, is on all fours with the case at bar. The goods were rosaries, composed of glass beads with metal chain and cross; wood beads with metal chain and cross; beads, chain and cross all of metal; bone beads with metal chain and cross; ivory beads with metal chain and cross; beads, chain and cross all of silver; mother-of-pearl beads with metal chain and cross. The beads were, in every instance, the component material of chief value, as shell is in the opera-glasses here. The importer claimed the rosaries dutiable as manufactures in part metal, manufactures of which bone was a component material, etc., just as the

Government claims here that the opera-glasses are dutiable as manufactures composed in part of metal. The importer might well have claimed, and probably did, that the provision for beads and bead ornaments related only to articles composed exclusively or almost exclusively of beads, just as the Attorney-General here claims that the provision for shells and parts of, manufactured, relates only to articles composed exclusively or almost exclusively of shell. But this Court held that the rosaries were dutiable as beads and bead ornaments, by virtue of the provision of Section 2499 for articles composed of two or more materials, beads being the component material of chief value, just as we now ask it to hold that the opera-glasses are dutiable as shells and parts of, manufactured, by virtue of the corresponding provision of the Act of 1883, shell being the component material of chief value.

As pointed out by Judge BLATCHFORD in the album case, this new provision making articles composed of two or more materials dutiable according to the component material of chief value was doubtless inserted to meet the hardships and inequities in administration which had prevailed under the law making such articles dutiable at the highest rate chargeable on any of the component parts. The success of the Attorney-General's contention in this case would mean the perpetuation of the very mischief which the change in Section 2499 was intended to cure.

The reason and justice of this case as well as the technical rules of construction are with the defendant in error. Rates of duty for various materials are selected by Congress with a view to the value of those materials.

A duty of 45 per cent. was selected for metal, and a duty of 25 per cent. was selected for shell, which by reason of the greater value of the latter would amount to more money than a duty of 45 per cent. on a corresponding amount of metal. Thus, a ten-dollar metal

opera-glass at 45 per cent. would pay $4.50 duty. A $20 pearl opera-glass at 25 per cent. would pay $5 duty. Where the article is composed of two or more materials the reasonable rule established by Congress was that the whole article should pay the duty chargeable on the component material of chief value. But the claim of the Government would make an opera-glass of which rare and highly finished pearl constituted three-fourths of the value, while metal and glass each constituted one-eighth of the value, pay 45 per cent. duty on the value of the pearl. If the law required this, it would be a most unreasonable and unjust law, and this consideration should strengthen, if any fortification were necessary, the argument that no such construction of the tariff was ever contemplated by its makers.

The judgment should be affirmed.

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